Canadian Human Rights Tribunal

Tribunal canadien des droits de la personne

Citation: 2025 CHRT 80
Date: August 20, 2025
File No.: T1340/7008

Between:

First Nations Child and Family Caring Society of Canada

- and -

Assembly of First Nations

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada
(Representing the Minister of Indigenous and Northern Affairs Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Nishnawbe Aski Nation

- and -

Amnesty International

Interested parties

Ruling

Members: Sophie Marchildon
Edward P. Lustig

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I. Context

[1] In 2016, the Tribunal released *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada),* 2016 CHRT 2 [Merit Decision] and found that this case is about children and how the past and current child welfare practices in First Nations communities on reserves, across Canada, have impacted and continue to impact First Nations children, their families and their communities. The Tribunal found that Canada racially discriminated against First Nations children on reserve and in the Yukon in a systemic way not only by underfunding the First Nations Child and Family Services Program (FNCFS) but also in the manner that it designed, managed and controlled it. One of the worst harms found by the Tribunal was that the FNCFS Program failed to provide adequate prevention services and sufficient funding. This created incentives to remove First Nations children from their homes, families and communities as a first resort rather than as a last resort. Another major harm to First Nations children was that zero cases were approved under Jordan's Principle given the narrow interpretation and restrictive eligibility criteria developed by Canada. The Tribunal found that beyond providing adequate funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice in the best interest of children. The Tribunal established Canada's liability for systemic and racial discrimination and ordered Canada to cease the discriminatory practice, take measures to redress and prevent it from reoccurring, and reform the FNCFS Program and the 1965 Agreement in Ontario to reflect the findings in the Merit Decision. The Tribunal determined it would proceed in phases for immediate, mid-term and long-term relief and program reform and financial compensation so as to allow immediate change followed by adjustments and finally, sustainable long-term relief. This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties, (see 2023 CHRT 44, at paras 16-17).

[2] The Tribunal also ordered Canada to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of

Jordan's Principle. Jordan’s Principle orders and the substantive equality goal were further detailed in subsequent rulings.

[3] The Tribunal determined all the above need to be adequately funded. This means in a meaningful and sustainable manner so as to eliminate the systemic discrimination and prevent it from reoccurring, (see 2023 CHRT 44, at para 18).

[4] The Panel was clear in 2016 CHRT 10 that it hoped that reconciliation could be advanced through the parties resolving remedial issues through negotiations rather than adjudication (para 42). The Panel noted in 2016 CHRT 16 that some of the parties cautioned the Tribunal about the potential adverse impacts that remedial orders could have (para 13). Accordingly, the Tribunal strongly encouraged the parties to negotiate remedies, including on the issue of compensation.

[5] The Tribunal issued a series of rulings and orders to completely reform the Federal First Nations Child and Family Services Program, including long-term reform orders focused on prevention, in 2022 CHRT 8. In 2019, the Tribunal ruled and found Canada’s systemic and racial discrimination caused harms of the worst kind to First Nations children and families. The Tribunal ordered compensation to victims/survivors and, at the request of the complainants and interested parties, the Tribunal made binding orders against Canada to provide compensation to victims/survivors. The Tribunal then issued a series of compensation process decisions at the parties’ requests and this process came to an end in late 2020 when Canada decided to judicially review the Tribunal’s compensation decisions and halt the completion of the compensation process’s last stages which would have allowed distribution of the compensation to victims/survivors, (see 2023 CHRT 44, at para 19). The Tribunal, after partially rejecting an initial Settlement Agreement on compensation, approved a Final Settlement Agreement on compensation in 2023.

[6] The Tribunal encouraged the parties for years to resolve issues.

[7] On February 10, 2025, the Tribunal requested submissions from the parties on how best to proceed with what is still outstanding in the long-term phase of remedies in the best interests of First Nations children and in accordance with section 48.9(1) of the *Canadian*

Human Rights Act, R.S.C., 1985, c. H-6 (CHRA). In making its decision, the Tribunal has received and considered all of those submissions.

[8] The Tribunal has decided to move forward without further delay into the long-term phase of remedies both for Ontario and the National FNCFS long-term reform concurrently but separately. Given the orders below, which include a broad consultation component, and to avoid a situation similar to the one found in 2022 CHRT 41 concerning the parties interpretation of the Tribunal's final orders, the Tribunal finds it necessary to provide clarity on its 2016 CHRT 2 final order against Canada to: cease the discriminatory practices found and reform the FNCFS Program and *1965 Agreement* to reflect the findings in this decision and cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle. This will be explained in detail below.

[9] This ruling does not decide the Consultation Motion brought by the Caring Society, which is broader in scope and will require a lengthier consultation process, as it encompasses Jordan's Principle long-term reform. The orders in this ruling are necessary to best inform the Tribunal on the appropriate next steps and are made in keeping with the Tribunal's previous rulings and section 48.9(1) of the CHRA, regardless of whether the Tribunal grants the Consultation Motion. If the Tribunal grants the motion, the National FNCFS long-term reform plan will assist the parties in their discussions. If the Tribunal does not grant the motion, or if Canada—being unwilling to return to negotiations—disagrees with the Tribunal, the Tribunal will nonetheless already have something tangible on which to rely and can move forward with the assistance of the parties outside the Consultation Motion proceedings. This serves as a safeguard to protect First Nations children from undue delays in receiving justice in the event that the Consultation Motion decision results in prolonged negotiation or further potential proceedings before the Courts. The Tribunal hopes that the parties and First Nations will recognize the well-intentioned and creative nature of the orders set out in this ruling.

[10] The Tribunal finds it important to elaborate on the purpose and intent of the dialogic approach, including what it is not intended to be. This will be explained below.

II. Moving forward on a National FNCFS long-term reform concurrently and separately from Ontario

[11] On February 10, 2025, the Tribunal wrote to the parties

> The Tribunal signaled in 2018 CHRT 4 that it had entered the long-term remedial phase. The Tribunal ordered studies to inform the long-term remedies. The Panel reminds Canada that it can end the process at any time with a settlement on compensation, immediate relief and long-term relief that will address the discrimination identified and explained at length in the Decision. Otherwise, the Panel considers this ruling to close the immediate relief phase unless its orders are not implemented. The Panel can now move on to the issue of compensation and long-term relief. (see 2018 CHRT 4 at, para. 385).
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> In 2022, the parties came back to this Tribunal asking for what they described as approximately 80% of the long-term remedial consent orders and that they would have a full reformed program by March 2023. This Tribunal issued its orders on consent of the parties in March 2022, nearly 3 years ago and has waited since and is still waiting.
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> 2022 CHRT 8:
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> 25. On December 31, 2021, the Parties announced that they had reached an Agreement-in-Principle on long-term reform. As part of that Agreement-in-Principle, the Parties committed to reforming the FNCFS Program by March 31, 2023, as well as improving compliance with and reforming Jordan's Principle.
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> Also, in the Agreement-in-Principle, the parties have agreed that the Reformed CFS Funding Approach will accommodate First Nations and FNCFS service providers experiencing exceptional circumstances, to be defined in the Final Settlement Agreement, which may require a longer transition to the Reformed CFS.
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> 26. In addition, the terms of the consent order sought in this consent motion (see paras 1-9 under "orders sought") were annexed to the Agreement-in-Principle.
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> Following the execution of the Agreement-in-Principle, the Caring Society, the
>
> AFN, and Canada agreed to seek this order as soon as possible.
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> VIII. Retention of Jurisdiction
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> [175] Pending a complete and final agreement on long term relief on consent or otherwise and consistent with the approach to remedies taken in this case

> and referred to above, the Panel retains jurisdiction on the Consent Orders contained in this ruling. The Panel will revisit its retention of jurisdiction once the parties have filed a final and complete agreement on long-term relief or as the Panel sees fit considering the upcoming evolution of this case.
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> The Tribunal has been flexible and patient, however, is seriously considering options to move forward with the long-term remedial phase in accordance with its mandate under the *CHRA*, its rulings and in the best interest of First Nations children. The dialogic approach was adopted to move things forward in this case with an emphasis on consultation and reconciliation; however, the dialogic approach is not meant to be waiting for years and years of delay without finality. The Tribunal as master of its own house, has the power to control its own process and not idly wait for parties to unilaterally decide when and how to come back to the Tribunal and how many years to wait before the Tribunal can close the long-term remedial phase chapter.
>
> It is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time. Reform may take longer but can be projected with the assistance of the studies. The Panel gave guidance on long-term remedy on multiple occasions and recently in 2025 CHRT 6. The Panel continues to rely on this rationale.
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> The Panel is giving an opportunity for the parties to share their views on the above for the Panel's consideration before it decides next steps. This question does not include Jordan's Principle for the time being. The parties will respond by:
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> Caring Society, AFN, COO and NAN by February 24, 2025
> Commission by March 3, 2025
> Canada by March 17, 2025

[12] The parties filed submissions in response to the Tribunal's questions and those submissions are summarized below.

[13] The First Nations Child and Family Caring Society (the "Caring Society") writes further to the Panel's direction of February 10, 2025, and in response to Canada's submission of March 17, 2025, regarding the long-term reform phase of this human rights complaint. It has been over nine years since the Merits Decision and much has been accomplished.

[14] The Tribunal's retention of jurisdiction remains essential, at this time, to ensuring that Canada's discriminatory conduct is eradicated from child and family services and Jordan's Principle and is not repeated for future generations.

[15] The Caring Society submits that the First Nations-in-Assembly, the National Children's Chiefs Commission (the "NCCC"), and the Caring Society are ready, along with the research regarding First Nations child and family services ("FNCFS") and Jordan's Principle, to build, through dialogue with Canada, an enduring end to Canada's discriminatory conduct and ultimately resolve the complaint. Yet without Canada at the table, we cannot move forward. To this end, the Caring Society's view on the issues raised by the Panel in its February 10, 2025, letter centres on requiring Canada to consult on long-term reform solutions that are grounded in the evidence, which is now ready, with the co-complaints, and with the NCCC. Canada's suggestion that the Ontario Final Settlement Agreement form the basis for national long-term reform of FNCFS is wholly inappropriate, given that many of the terms therein were considered and ultimately rejected by First Nations outside of Ontario.

[16] The Caring Society submits that First Nations and the National Children's Chiefs Commission are ready.

[17] In October 2024, First Nations-in-Assembly passed resolutions directing a reset of work towards long-term reform, including the establishment of the NCCC and the inclusion of the Caring Society in FNCFS and Jordan's Principle negotiations and long-term reform. Since October 2024, the Caring Society has been working with technical experts across Canada to support the implementation of the direction of First Nations-in-Assembly, including collaboration with the NCCC when requested.

[18] The First Nations-in-Assembly resolutions set out clear direction for FNCFS reform, guided by the NCCC, that is informed by evidence and protects First Nations children from discrimination now and forever. Through collective decision-making and affirmed resolutions, First Nation leaders have called for the development of a national umbrella agreement, with regional agreements that take full account of the distinct circumstances, cultures and the inherent rights of the children and the First Nations they belong to. First Nations-in-Assembly were clear in their expectations of a nation-to-nation relationship with the government of Canada and have repeatedly insisted on the importance of Canada fulfilling its obligations under the United Nations Declaration on the Rights of Indigenous

Peoples (UNDRIP), the honour of the Crown and asserting their right to Free, Prior and Informed Consent.

[19] The Caring Society supports the approach set forth by the First Nations-in-Assembly and is confident that if (and when) Canada returns to the table in good faith, consistent with direction of the First Nations-in-Assembly, First Nations children, youth and families will be protected from discrimination now and into the future. Canada's refusal to continue consultations and meaningfully engage in the dialogic approach to end discrimination for all First Nations children evidences the need for the Tribunal to maintain its jurisdiction in this regard.

[20] The Caring Society submits that the research is ready and the studies will be completed by March 31, 2025.

[21] The Caring Society shares the Panel's concerns regarding the delay in achieving long-term reform and recognizes that the Tribunal cannot indefinitely remain seized of this complaint. However, the Caring Society sees Canada's refusal to return to discussions with First Nations outside of Ontario and recent unilateral actions on Jordan's Principle, which appear to dramatically narrow the scope of the support Canada is willing to provide, as demonstrating that the progress since the Merits Decision is still not yet entrenched. As such, it is the Caring Society's position that a premature release of jurisdiction risks eroding the hard work undertaken over the last nine years, including from the lessons learned from First Nations outside of Ontario in their calls for a new approach to long-term reform.

[22] The Caring Society further submits that Canada's reliance on the Ontario Final Settlement Agreement (FSA) to inform national First Nations Child and Family Services (FNCFS) long-term reform contradicts the direction of First Nations rights holders and the express resolutions of the First Nations-in-Assembly. The Ontario FSA was rejected by First Nations outside of Ontario and cannot serve as the blueprint for national reform, as it fails to meet the goal of ending and preventing discrimination. Canada must be deterred from using the Ontario FSA as a national template, as it does not reflect the diverse needs of First Nations children, youth, and families across the country. While the Ontario FSA should proceed with care for those it impacts, national FNCFS long-term reform must advance

concurrently through evidence-informed consultation in accordance with First Nations-in-Assembly guidance.

[23] Much of the work needed to meet these milestones has been completed. With Canada at the table, the Caring Society is confident that long-term reform can be achieved. Even if there are some disagreements on certain aspects of reform, the dialogic approach has assisted the Parties in the past, as evidenced by the approach taken to the Compensation Framework Order and the Revised Final Settlement Agreement on compensation.

[24] The Caring Society and the AFN Executive, supported by the NCCC, have a pathway for achieving long-term reform. Consultation regarding FNCFS and Jordan's Principle is essential to ensure First Nations children, youth and families benefit from a fulsome consultation process, bringing together the NCCC and First Nations, national and regional experts, the co-complaints and Canada in manner that upholds the principles of fairness and good faith negotiations and substantive equality.

[25] The Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations in-Assembly have set the table for evidence-informed solutions for FNCFS and Jordan's Principle. First Nations and the NCCC is ready, the EAC is ready, the research is ready and so is the Caring Society. It is Canada that is the source of delay and requires encouragement from this Tribunal to make itself ready.

[26] The AFN is in agreement with the Caring Society's submission that the main obstacle to long-term reform is Canada's refusal to continue consultations, and meaningfully engage in the dialogic approach in relation to continuing to develop a national agreement on long-term reform of First Nations child and family services, with regional variations which substantively address the distinct circumstances, cultures, and inherent rights of First Nations children and families.

[27] The AFN has reviewed the National Children's Chiefs Commission's ("NCCC") correspondence requesting that Canada immediately re-engage with the NCCC, AFN Executive, and the Caring Society to complete negotiations of a long-term reform

agreement. The AFN agrees with the NCCC's statement in its February 21, 2025, letter that a national long-term reform agreement is within reach and merely requires Canada to return to the negotiation table to work with the NCCC, the AFN Executive, and the Caring Society in good faith.

[28] The COO respects that the Chiefs in other regions were not agreeable to move ahead with the proposed reforms, as is their right. COO and NAN have been working closely together on long-term reform that suits the needs of First Nations in Ontario and as mandated by their respective Chiefs-in-Assembly to do so. Ontario Regional Chief Abram Benedict and Grand Chief Alvin Fiddler formally invited Canada to enter into negotiations to achieve reform to the FNCFS Program in Ontario. On December 30, 2024, Canada announced to COO and NAN it had received a mandate to negotiate with COO and NAN to implement the reforms contained in the rejected national agreement, but specifically in Ontario.

[29] A provisional Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement were reached on February 10, 2025, and will be the subject of ratification votes by the NAN Chiefs and Ontario Chiefs-in-Assembly on February 25 and 26, 2025, respectively.

[30] The COO submits that if the draft agreements are ratified by the NAN and Ontario Chiefs, the COO expects to bring a joint motion in March 2025 along with the NAN and Canada seeking a Tribunal order that the draft Ontario Final Agreement and the Trilateral Agreement Respecting the 1965 Agreement meet the Tribunal's prior orders and consequently that the Tribunal's jurisdiction over the long-term reform of the FNCFS Program in Ontario (but not Jordan's Principle) is ended.

[31] The NAN submits that with respect to the Panel's concerns regarding long-term reform, specifically the delay in reaching long-term reform through efforts towards consultation, The NAN advises that the Assembly of First Nations (AFN), Chiefs of Ontario (COO), NAN, and Canada reached a draft Final Agreement on long-term reform in July 2024. In October 2024, NAN and COO each and separately held successful ratification

votes on the draft Final Agreement. However, the draft Final Agreement was ultimately rejected by the First Nations in Assembly of the AFN in October 2024.

[32] While the AFN, by majority, rejected the draft Final Agreement, Chiefs in the Ontario region were largely supportive. The Ontario region Chiefs therefore directed the leadership within NAN and COO to pursue a regionalized version of the reforms contained in the draft Final Agreement.

[33] On December 30, 2024, Canada informed the NAN and the COO that it had a mandate to negotiate a regionalized version of the draft Final Settlement Agreement for long-term reform in Ontario only.

[34] The NAN submits that between December 30, 2024, and February 10, 2025, Canada, the NAN, and the COO negotiated a provisional Ontario Final Agreement (OFA) and a Trilateral Agreement Respecting the 1965 Agreement. These two draft agreements will be voted on in a Special Chiefs Assembly by NAN Chiefs on February 25, 2025, and by Special Chiefs Assembly by Ontario Chiefs on February 26, 2025. Without in any way pre-determining the will of the Chiefs in the above-noted Special Chiefs Assemblies; if so instructed, the NAN, the COO, and Canada intend to bring a joint motion to the Tribunal. The relief sought on this motion would be to end the Tribunal's jurisdiction over the long-term reform of the First Nation Child and Family Services Program in Ontario based on a new Ontario Final Agreement settlement.

[35] The NAN submits that as the Tribunal is aware, dating back to 2016, NAN has strongly advocated for the development of a remoteness quotient that would address the unique challenges faced by remote communities in the delivery of child and family services. This work has culminated in the development of a form of indexing for remoteness termed the Remoteness Quotient Adjustment Factor (RQAF). The RQAF indexing coupled with important terms around remoteness data collection and research represent gains that NAN, in partnership with the COO and Canada, has sought to preserve in the new proposed OFA. If so mandated by the Chiefs, it is NAN's intention to file materials with the Tribunal that elaborate on these significant reforms.

[36] The specific motion materials are the subject of discussions with the COO and Canada but will reflect the context and factual foundation of the work that has been done to conclude long-term reform in Ontario.

[37] Following the COO and the NAN's submissions above, and the resolutions from a majority of the Chiefs-in-Assembly in Ontario, the NAN and the COO brought a joint motion seeking the Tribunal's approval of a final settlement agreement for long-term reform in Ontario. Both the COO and the NAN request the joint motion to proceed expeditiously.

[38] The Commission's view is that it is respectfully the decision of the Tribunal to determine how to advance the long-term remedial stage. The Commission has not been involved in negotiations on long-term reform. Instead, the development of remedies on long-term reform was led by the First Nations bodies with ties to the First Nations children, families, and communities harmed by Canada's discriminatory practices. The Commission acknowledges the Tribunal's jurisdiction over this matter. As noted by the Tribunal, the parties entered the long-term remedial phase in 2018 and committed to reforming the FNCFS Program by March 2023. In the spirit of consultation and reconciliation, the Tribunal adopted the dialogic approach to provide the parties with an opportunity to engage in good faith negotiations to advance this matter while seeking direction from the Tribunal as needed.

[39] While being supportive of the dialogic approach, the Commission is concerned with the amount of time it has taken to achieve long-term reform of the FNCFS Program. As explained by the Federal Court, while negotiations are a way to realize the goal of reconciliation, good will in the negotiation process must be encouraged and fostered "before the passage of time makes an impact on those negotiations." The Commission agrees with the Tribunal's rationale that "[i]t is far better for children to complete the long-term remedial phase shortly rather than wait for long periods of time."

[40] As the Tribunal recently expressed, it has always hoped for a settlement on long-term reform by way of consent order requests by the parties. If this is not possible, however, the Tribunal stated that it "can make systemic long-term orders informed by the parties to eliminate the systemic discrimination found".

[41] Canada submits that as the Tribunal is aware, Canada, the Chiefs of Ontario (COO) and the Nishnawkbe Aski Nation (NAN) recently entered into an agreement to reform the FNCFS Program in Ontario (Ontario Final Agreement), as well as a Trilateral Agreement respecting the 1965 Agreement. These agreements were ratified by the NAN Chiefs and the Ontario Chiefs-in-Assembly on February 25 and 26, 2025 respectively. On March 7, 2025, the COO and the NAN filed a joint motion for approval of the Ontario Final Agreement, which Canada has supported.

[42] These agreements come after years of research, study, consultation and negotiation with the Assembly of First Nations (AFN), the First Nations Child and Family Caring Society of Canada (Caring Society), COO and NAN, all in an effort to secure agreement on the long-term reform of the FNCFS Program nationally, the specifics of which are set out in the Affidavit of Duncan Farthing-Nichol, filed on March 13, 2025, in response to the Caring Society's consultation motion. These specifics include:

- completion of the December 31, 2021, Agreement in Principle;
- the funding and work of multiple committees and tables to provide advice and consider general and specific reform issues;
- regular meetings between the parties, including multiple full day negotiation meetings;
- Indigenous Services Canada's (ISC) financial support of the development of research in a number of areas. This included funding, amongst other research, of contracts between the AFN and the Institute of Fiscal Studies and Democracy (IFSD), and between the Caring Society and IFSD, to inform the development of an alternative funding system.

[43] Canada submits that it is of note that during most of the period of consultation and negotiation on long-term reform of the FNCFS Program, the Caring Society, the AFN, COO and NAN were active participants in either consultations or negotiations with Canada. The Caring Society ceased their participation in negotiations between December 2023 and February 2024. The AFN did not participate in the negotiation of the Ontario specific agreement in January 2025 but was otherwise an active participant in the negotiations.

[44] With this context in mind, Canada respectfully submits that the best way to move forward with the long-term remedial phase is for the Tribunal to first consider the joint motion

from COO and NAN respecting long-term reform of the FNCFS program in Ontario. This motion, if granted, would finally resolve and remedy all issues respecting the FNCFS Program in Ontario. For the benefit of First Nation children and families in Ontario, it is imperative that this motion proceed without delay. Further, the outcome of the joint motion is likely to inform the path forward in these proceedings, including the use of the dialogic approach and the completion of the long-term remedial phase outside of Ontario.

[45] Canada respectfully urges the Tribunal to honour the effort and urgency expressed by the COO and the NAN to address the joint motion. Canada also urges the Tribunal to facilitate the consideration of the Ontario Final Agreement, which is conditional on Tribunal approval, by placing the Caring Society's consultation motion temporarily into abeyance. Consideration of national reform continues to be extremely important to Canada. It is Canada’s perspective that the Tribunal’s analysis of the Ontario Final Agreement will inform the next steps on national reform.

[46] Canada submits that the FNCFS Program today is very different than it was in 2016. Canada has done significant work and has implemented important reforms. During consultations and negotiations, Canada made considerable reforms to the Program in keeping with the parties’ recommendations and the orders from this Tribunal (including on consent). Canada has and continues to implement this Tribunal’s orders. Further, Canada has and continues to provide funding beyond the Tribunal’s orders, including with respect to housing and First Nations Representative Services outside Ontario. Recipients who are eligible to receive funding under the FNCFS Program continue to benefit from these reforms. Approximately $3.6 billion in funding was provided in 2023-2024, which stands in stark contrast with the $676.8 million in funding spent on the FNCFS Program in 2015-2016, when this complaint was substantiated. Effectively Canada is more than honouring the Tribunal’s orders. As such, Canada is asking the Tribunal to honour the urgency of the COO and the NAN’s joint motion and focus first on Ontario Final Agreement. It is Canada’s perspective that the work of final national reforms will benefit from and be informed by the Tribunal’s review of the Ontario final reforms.

[47] Canada has since filed an amended joint OFA motion, specifying that it has joined COO and NAN as co-moving parties.

III. Analysis

[48] On January 26, 2016, this Panel rendered its decision on the merits (see, 2016 CHRT 2, https://canlii.ca/t/gn2vg, (Merit Decision). This Merit Decision was long awaited by First Nations Peoples and was positively received. This was the result of the enormous collective efforts of the parties especially, the co-complainants, the First Nations Child and Family Society (Caring Society) and the Assembly of First Nations (AFN) and the Canadian Human Rights Commission (Commission). The decision was publicly described as historic, landmark and groundbreaking. Canada accepted the decision through its Justice Minister Jody Wilson Raybould, as she then was. Minister Wilson Raybould made powerful public comments on the Tribunal's Merit Decision: "We believe that this decision is pointing us in the right direction, as a country, and we will not seek a judicial review of the decision. This is part of the new relationship and spirit of reconciliation that our government is committed to." https://www.cbc.ca/news/politics/federal-government-not-appeal-children-reserves-1.3458969

[49] In its 182 pages Merit Decision, the Tribunal made a whole array of findings including on: intergenerational trauma, international law, residential schools, the sixties scoop, substantive equality, and much more, in support of its orders.

[50] The Tribunal wrote: AANDC (now Indigenous Services Canada) is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle.

[51] At, paragraph 482, the Tribunal found:

> More than just funding, there is a need to refocus the policy of the program to respect human rights principles and sound social work practice. In the best interest of the child, all First Nations children and families living on-reserve should have an opportunity "…equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society" (*CHRA* at s. 2).

[52] In the Missing and Murdered Indigenous Women and Girls' November 1, 2017, interim report, *Interim Report the National Inquiry into Missing and Murdered Indigenous Women and Girls: Our Women and Girls are sacred*, made findings and recommendations based on the Tribunal's Merit Decision:

> This legal case, as well as a substantial number of the reports we reviewed, recognizes strong links between the child welfare system and violence against Indigenous women and girls in Canada, at. page. 45.
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> (…)
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> The National Inquiry calls for:
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> immediate action for: Full compliance with the Canadian Human Rights Tribunal ruling (2016) that found that Canada was racially discriminating against First Nations children, at. pages 80- 81.

[53] The Tribunal takes judicial notice that Canada accepted the interim report. (See for example, at, https://search.open.canada.ca/qpnotes/record/wage%2CWAGE-2020-QP-00005?utm_source).

[54] While the stronger legally binding step from Canada was when the Justice Minister decided not to judicially review the Merit Decision, the recommendations from the MMIWG accepted by Canada reinforce Canada's public commitments.

[55] The United Nations Committee on Economic, Social and Cultural Rights (CESCR) recommended that Canada review and increase its funding to family and child welfare services for Indigenous Peoples living on reserves and fully comply with the Tribunal's January 2016 Decision. The CESCR also called on Canada to implement the Truth and Reconciliation Commission's recommendations with regards to Indian Residential Schools. (see Economic and Social Council, CESCR, concluding observations on the sixth periodic report of Canada, March 23, 2016, E/C.12/CAN/CO/6, paras 35-36; See also Affidavit of Dr. Cindy Blackstock, December 17, 2016, at para 33, Exhibit L).

A. The general orders in 2016 CHRT 2

[56] The word **cease** found in the order is taken directly from the quasi-constitutional CHRA:

> 53 (2) If at the conclusion of the inquiry the member or panel finds that the complaint is substantiated, the member or panel may, subject to section 54, make an order against the person found to be engaging or to have engaged in the discriminatory practice and include in the order any of the following terms that the member or panel considers appropriate:
>
> (a) that the person cease the discriminatory practice and take measures, in consultation with the Commission on the general purposes of the measures, to redress the practice or to prevent the same or a similar practice from occurring in future, including
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> (i) the adoption of a special program, plan or arrangement referred to in subsection 16(1), or
>
> (ii) making an application for approval and implementing a plan under section 17;

[57] In 2018 CHRT 4, at. para 34, the Tribunal explicitly stated that section 53(2)(a) of the CHRA grants it jurisdiction to make a “cease and desist order”, the Tribunal stated clearly:

> [34] Section 53(2)(a) of the *CHRA* gives this Tribunal the jurisdiction to make a cease and desist order. In addition, if the Tribunal considers it appropriate to prevent the same or a similar practice from occurring in the future, it may order certain measures including the adoption of a special program, plan or arrangement referred to in subsection 16(1) of the *CHRA* (see *National Capital Alliance on Race Relations (NCARR) v. Canada (Department of Health & Welfare)* T.D.3/97, pp. 30-31). The scope of this jurisdiction was considered by the Supreme Court of Canada in *CN v. Canada (Canadian Human Rights Commission),* 9 [1987] 1 SCR 1114, [Action Travail des Femmes]). In adopting the dissenting opinion of MacGuigan, J. in the Federal Court of Appeal, the Court stated that:
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> ...s. 41(2)(a), [now 53(2)(a)], was designed to allow human rights tribunals to prevent future discrimination against identifiable protected groups, but he held that "prevention" is a broad term and that it is often necessary to refer to historical patterns of discrimination, in order to design appropriate strategies for the future... (at page 1141).
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> [35] The Supreme Court also said in reference to the Order made by the Tribunal in that case:
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> ...When confronted with such a case of "systemic discrimination", [as was the case with Canadian National Railway], it may be that the type of order issued

by the Tribunal is the only means by which the purpose of the *Canadian Human Rights Act* can be met.

In any program of employment equity, there simply cannot be a radical dissociation of "remedy" and "prevention". Indeed, there is no prevention without some form of remedy... (at pages 1141 to 1142).

[36] The Court pointed out that:

Unlike the remedies in s. 41(2)(b)-(d), [now Section 53], the remedy under s. 41(2)(a), is directed towards a group and is therefore not merely compensatory but is itself prospective. The benefit is always designed to improve the situation for the group in the future, so that a successful employment equity program will render itself otiose. (at page 1142)

[37] As in the *NCARR* case referred to above, the Panel is not dealing with employment equity issues however, there is nothing in the *CHRA* that restricts remedies under section 53 (2) (a) to employment equity issues. Similar to the analysis in NCARR, the Panel believes this is applicable to the case at hand.

[38] In fact as an example, the words in section 16 (1) of the *CHRA* are not earmarked for employment situations only:

Special programs

16 (1) It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be based on or related to the prohibited grounds of discrimination, by improving opportunities respecting goods, services, facilities, accommodation or employment in relation to that group. (emphasis added).

[39] Moreover, the Federal Court of Canada in regards to remedies stated in *Grover v. Canada (National Research Council*) (1994), 24 CHRR D/390 (FC) at para. 40 [Grover], “[s]uch a task demands innovation and flexibility on the part of the Tribunal in fashioning effective remedies and the *Act* is structured so as to encourage this flexibility.” (emphasis added).

[40] The Tribunal made extensive findings in 2016 CHRT 2 and provided very detailed reasons as to how it arrived at its findings. The Panel specifically mentioned that reform must address the findings in the Decision. This case is about underfunding, policy, authorities and, the National Program that were found to be discriminatory.(...) .

[41] Canada must accept that liability was found and that remedies flow from this finding. The Decision was not a recommendation; it is legally binding.

> [42] To the same extent that funds must be provided to comply with Court decisions, funds must also flow from the Tribunal's Decision. Treasury Board decisions cannot be above the *CHRA* when it comes to expenses for liability.
>
> [43] The Panel to date has not made orders prescribing specific amounts of funding. It has chosen to make orders flowing from its findings which were accepted by Canada.

[58] The Tribunal in 2019 CHRT 7, at. paragraph 52 described this power as an injunction-like power.

[59] In *Canada (human Rights Commission) v. Taylor*, 1990 CanLII 26 (SCC), [1990] 3 SCR 892 (Taylor), the Supreme Court made findings on a Canadian Human Rights Tribunal decision which found the Western Guard Party had repeatedly sent telephonic hate messages directed at Jewish individuals—constituting a discriminatory practice under section 13(1) of the CHRA. The Tribunal ordered the messages to cease, effectively commanding the conduct stop immediately. To summarize Chief Justice Dickson's comments in the Taylor decision, the fact that the Act imposes no criminal sanction is particularly important. Section 13(1) is not aimed at punishing an individual for expression. Rather, in conjunction with s. 53(2)(a), it provides a remedy for discriminatory expression in the form of a cease and desist order. This is a remedial order, not a penal one. It is forward-looking and aimed at preventing the continuation of discriminatory practices. The order does not involve a fine or imprisonment, and does not attract a criminal record.

[60] This shows that a Tribunal's cease-order under section 53(2)(a) of the CHRA is treated the same as an injunction.

[61] The Tribunal made this order to cease the systemic discriminatory practices found as an order meant to protect First Nations and families for generations to come. It is a forward-looking order aimed at preventing the continuation of the discriminatory practice found and as mentioned multiple times in previous rulings in this case, prevent future practices to reoccur.

[62] Without this assurance of both a final and long-term order to cease the discriminatory practice and prevent its recurrence, respondents, especially the ones found liable in systemic cases, could cease their discriminatory practices until such time as the Tribunal no

longer has jurisdiction and there would be no safeguard in place should the systemic discrimination start again years later. This would leave the victims of the systemic discrimination to start their case all over again. Such an unreasonable result is the opposite of access to justice. Moreover, it is the opposite of judicial economy and is undoubtfully unjust.

[63] The Tribunal confirms the final nature of the general orders in 2016 CHRT 2, at paragraph 481, to cease the discriminatory practice that are akin to an injunction:

> AANDC is ordered to cease its discriminatory practices and reform the FNCFS Program and 1965 Agreement to reflect the findings in this decision. AANDC is also ordered to cease applying its narrow definition of Jordan's Principle and to take measures to immediately implement the full meaning and scope of Jordan's principle, (emphasis added).

[64] The Tribunal will next turn to the dialogic approach and examine its proper relationship to the final 2016 CHRT 2 orders explained above.

B. The Tribunal's Dialogic approach

[65] The Federal Court, in a judicial review initiated by Canada in this case, in *Canada (Attorney General) v. First Nations Child and Family Caring Society of Canada*, 2021 FC 969, in dismissing all of Canada's arguments, made important comments on the Tribunal's approach to remedies in this case:

> [135] The fact that the Tribunal has remained seized of this matter has allowed the Tribunal to foster dialogue between the parties. The Commission states that the leading commentators in this area support the use of a dialogic approach in cases of systemic discrimination involving government respondents (Gwen Brodsky, Shelagh Day & Frances M Kelly, "The Authority of Human Rights Tribunals to Grant Systemic Remedies", (2017) 6:1 Can J of Human Rights 1). The Commission described this approach as bold considering the nature of the Complaint and the complexity of the proceedings.
>
> [136] The dialogic approach contributes to the goal of reconciliation between Indigenous people and the Crown. It gives the parties opportunities to provide input, seek further direction from the Tribunal if necessary, and access information about Canada's efforts to bring itself in compliance with the decisions. As discussed later in my analysis of the Eligibility Decision, this

approach allowed the Tribunal to set parameters on what it is able to address based on its jurisdiction under the *CHRA*, the Complaint, and its remedial jurisdiction.

[137] The Commission states that the dialogic approach was first adopted in this proceeding in 2016 and has been repeatedly affirmed since then. It submits that the application of the dialogic approach is relevant to the reasonableness considerations in that Canada has not sought judicial review of these prior rulings.

[138] I agree with the Tribunal's reliance on *Grover v Canada (National Research Council)* (1994), 1994 CanLII 18487 (FC), 24 CHRR 390 [Grover] where the task of determining "effective" remedies was characterized as demanding "innovation and flexibility on the part of the Tribunal…" (2016 CHRT 10 at para 15). Furthermore, I agree that "the [*CHRA*] is structured so as to encourage this flexibility" (2016 CHRT 10 at para 15). The Court in Grover stated that flexibility is required because the Tribunal has a difficult statutory mandate to fulfill (at para 40). The approach in *Grover*, in my view, supports the basis for the dialogic approach. This approach also allowed the parties to address key issues on how to address the discrimination, as my summary in the Procedural History section pointed out.

…

[162] I disagree with the Applicant's characterization of the decisions following the Merit Decision as an "open-ended series of proceedings." Rather, the subsequent proceedings reflect the Tribunal's management of the proceedings utilizing the dialogic approach. The Tribunal sought to enable negotiation and practical solutions to implementing its order and to give full recognition of human rights. As well, significant portions of the proceedings following the Merit Decision were a result of motions to ensure Canada's compliance with the various Tribunal orders and rulings. (emphasis added)

…

[281] As noted above, I have determined that the Tribunal did not change the nature of the Complaint in the remedial phase. The Tribunal, exercising extensive remedial jurisdiction under the quasi-constitutional *CHRA*, provided a detailed explanation of what had transpired previously and what would happen next in each ruling/decision (See e.g. 2016 CHRT 16 at para 161). In so doing, it was relying on a dialogic approach. Such an approach was necessary considering the scope of the discrimination and the corresponding efforts to remedy or prevent future discrimination. Most importantly, the Tribunal was relying on established legal principles articulated in *Chopra v Canada (AG),* 2007 FCA 268 at para 37 and *Hughes* 2010 at para 50 (Merit

> Decision at paras 468, 483). I do not agree that the Tribunal did not provide the parties with notice of matters to be determined. (emphasis added)
>
> …
>
> [301] In my view, the procedural history of this case has demonstrated that there is, and has been, good will resulting in significant movements toward remedying this unprecedented discrimination. However, the good work of the parties is unfinished. The parties must decide whether they will continue to sit beside the trail or move forward in this spirit of reconciliation.
>
> [302] I find that the Applicant has not succeeded in establishing that the Compensation Decision is unreasonable. The Tribunal, utilizing the dialogic approach, reasonably exercised its discretion under the *CHRA* to handle a complex case of discrimination to ensure that all issues were sufficiently dealt with and that the issue of compensation was addressed in phases. The Tribunal ensured that the nexus of the Complaint, as discussed in the Merit Decision, was addressed throughout the remedial phases. Nothing changed. All of this was conducted in accordance with the broad authority the Tribunal has under the *CHRA*.

[66] The Dialogic approach does not supplant a final “cease the discriminatory practice” order grounded in the evidence and the CHRA; rather, it operates as a mechanism for implementing such an order. The cease order in this matter, addressing systemic racial discrimination, is firmly grounded in the extensive evidentiary record underlying the Merit Decision and is issued pursuant to the Tribunal’s authority under the *CHRA*. Its purpose is to provide immediate and enduring protection to the victims of such discrimination and to ensure that the same or similar practices do not recur.

[67] The Tribunal affirms that this order has never been negotiable and was not issued on an interim basis. The “cease the discriminatory practices” order in 2016 CHRT 2 is final and binding. It is not subject to variation under the Dialogic approach, nor to derogation or abrogation by any future decision in these proceedings, or to amendment through any agreement between the parties. The cease order determines what the authors of the discrimination must do—stop—while the Dialogic approach addresses how compliance is to be achieved, and the orders implemented. There may be multiple effective methods for remedying discrimination, and flexibility is permitted in selecting among them, provided that

the discrimination is fully and effectively addressed. What remains non-negotiable is the requirement to end systemic discrimination permanently.

[68] The dialogic approach is helpful in the phased remedy portion of this case; however, it cannot be elevated above final orders or be a means to stagnate long-term reform.

[69] In a recent case management conference, the Tribunal emphasized that the findings and orders in 2016 CHRT 2 are intended to be lasting. The Tribunal considers its general orders akin to an injunction to cease and desist the systemic racial discrimination identified and to prevent its recurrence, to constitute final orders that cannot subsequently be modified by this Panel or by future members.

[70] Moreover, while the Panel has no authority to bind Tribunal members in other cases, in this instance, the final orders found in 2016 CHRT 2 cannot be abrogated or amended by this Panel or by any new Panel members, if applicable.

[71] The Tribunal interpreted the principle of finality of its orders in 2022 CHRT 41 and continues to rely on the same reasoning:

> [178] Moreover, the parties could not contract out or ask the Tribunal to amend its evidence-based findings establishing systemic racial discrimination and related orders in the Merit Decision to a finding that there never was racial discrimination and, therefore, no remedy is required. In the same vein, if evidence-based findings are made that victims/survivors have suffered and should be compensated, the parties cannot contract out or ask the Tribunal to amend its previous evidence-based findings and related orders to a finding that certain victims/survivors entitled by this Tribunal have not suffered and should no longer receive compensation.
>
> [179] This is significantly different than asking the Tribunal to make a finding based on new evidence presented that demonstrates that some aspects of the discrimination found by this Tribunal has ceased in compliance with the injunction-like order made by this Panel to cease the discriminatory practice or that some amendment requests may enhance the Tribunal's previous orders to eliminate discrimination (2022 CHRT 8). The Tribunal's retention of jurisdiction is to ensure its orders are effectively implemented. This includes not narrowing its orders (see for example Jordan's Principle definition in 2017 CHRT 14) and eliminating the discrimination found in a complex nation-wide case involving First Nations from all regions. This is done through reporting, motions, clarification requests, etc. and findings are made on the evidence.

[72] However, as was also raised during the case management conference, numerous immediate and mid-term orders were intended to be superseded by sustainable long-term orders, with the assistance and input of the parties. The objective was to issue final long-term orders that would constitute an improvement upon the immediate orders, which had been made on the basis of the best evidence then available. The parties submitted that further studies and additional data collection were necessary to inform best practices in relation to long-term remedies.

[73] This Tribunal agreed and took a phased approach to the remedies in dividing them in categories: general orders in 2016 CHRT 2, immediate relief, mid-term relief, long-term relief, reform and compensation. This allowed the Tribunal to make immediate relief orders three months after the Merit Decision and in many subsequent decisions.

[74] This was to allow for change to occur immediately while studies and data collection would be completed. This was explained in previous rulings. This is how the dialogic approach was adopted by this Tribunal.

[75] The dialogic approach was never intended to continually revisit previous orders or to confine the proceedings within an endless cycle of interim measures. Its purpose is to facilitate the transition from immediate and mid-term orders based on the best evidence then available, to long-term, sustainable, culturally appropriate, evidence-based, orders, whether by consent or determination of the Tribunal (based on the parties' evidence and submissions), designed to benefit future generations. Moreover, long-term orders must be informed by First Nations' perspectives and guided by First Nations-led solutions.

[76] Furthermore, waiting months and years because some parties are not in agreement or do not want to negotiate anymore will not assist the Panel in determining the outstanding issues. The Tribunal has authority to move things forward to find meaningful, effective, sustainable, culturally appropriate, needs- based, long-term solutions for generations to come, that incorporate the distinct needs of First Nations without hearing directly from each one of them.

[77] The Tribunal cannot possibly hear directly from all 634 First Nations, organizations, experts, agencies etc. This was clear form the beginning of the proceedings and the dialogic approach did not change this:

> This process would allow the long-term relief to be informed by data collection, new studies and best practices as identified by First Nations experts, First Nations communities and First Nations Agencies considering their communities' specific needs, the National Advisory Committee on child and family services reform and the parties, (see 2023 CHRT 44, at paras. 16-17).

[78] The parties and the NCCC can consult them, and the parties can bring their perspectives to the Tribunal.

[79] In 2016 CHRT 11, at para 14, the Tribunal stated that: the Tribunal's remedial clarification and implementation process is not to be confused with a commission of inquiry or a forum for consultation with any and all interested parties.

[80] In 2022 CHRT 26, at paragraphs. 41-42 the Tribunal stated that:

> [41] Moreover, in this wide-ranging case, impacting First Nations communities in Canada, the Tribunal has to consider that every First Nation community or organization could seek to intervene in these proceedings to share their unique knowledge, experience, culture and history. Would they have expertise to offer? Absolutely. However, it is impossible for all of the First Nations to join this case without halting the work of the Tribunal. The Tribunal is informed by three large organizations representing First Nations (AFN, COO, NAN) and an organization with expertise in child welfare and other services offered to First Nations children regardless of where they reside (Caring Society) to consult with First Nations by different means and bring their perspectives to these proceedings.
> [42] Moreover, the Panel recognizes that the rights holders are First Nations people and First Nations communities and governments. While it is ideal to seek every Nations' perspective again, these proceedings are not a commission of inquiry, a truth and reconciliation commission or a forum for consultation. The Panel relies on the evidence, the parties in this case and the work that they do at the different committees such as the National Advisory Committee on Child Welfare (NAC), tables, forums and community consultations to inform its mid and long-term findings.

[81] In 2020 CHRT 31, at para 28, the Tribunal reiterated the same principle, quoting 2016 CHRT 11.

[82] In 2022 CHRT 8, the Tribunal on consent of the parties, made long-term relief orders focused on prevention and in line with the Merit Decision's findings on the need to reform and shift the approach from protection to prevention in the FNCFS Program. The Tribunal found that the Federal FNCFS Program focused on protection and created an incentive to remove Indigenous children from their families.

[83] Indeed, as this Tribunal already stated in these proceedings, this shift is necessary to stop the mass removal of children 2018 CHRT 4, at. paragraph 47:

> [47] More importantly, this case is vital because it deals with mass removal of children. There is urgency to act and prioritize the elimination of the removal of children from their families and communities.

[84] The Tribunal finds that the parties' commitment to return to the Tribunal with a National FNCFS long-term agreement by end of 2023 is overdue. The Tribunal, at the time that it made the consent orders in 2022 CHRT 8, was urged by the parties to remove the part of its compensation order that ensured compensation was owed to the victims/survivors of the discrimination until the systemic discrimination had ended. This was a powerful deterrent, and it was upheld by the Federal Court. The Tribunal given the prevention orders and, in foreseeing a long-term reform agreement in approximately a year's time, agreed to remove the ongoing aspect of the compensation and change it for a 2022 cut-off date.

[85] We are now in August 2025, and it is time for swift action.

[86] On January 29, 2025, the Tribunal made interim Jordan's Principle consultation orders. The parties opted for Tribunal-assisted mediation with a different Tribunal member than this Panel to resolve the 9 items. Six months later, the Tribunal is still waiting, and there is no indication of any agreement to date. The Tribunal was informed by Canada that the Tribunal-assisted mediation was terminated by the member on August 13, 2025, even though two outstanding items remained to be resolved under the Tribunal's orders. This mediation concerned interim orders under Jordan's Principle, not a complete long-term reform of the FNCFS Program or Jordan's Principle.

[87] Of note, in 2024, the AFN and Canada had discouraged the Tribunal to make interim Jordan's Principle orders given that a final Jordan's Principle long-term reform settlement

agreement was forthcoming in March 2025. The Tribunal rejected that argument based on its extensive experience in these proceedings and the low probability of obtaining such an agreement in that time frame. The parties could not agree on the 9 interim Jordan's Principle items in the time frame anticipated by the AFN and Canada to arrive to a complete long-term reform agreement for Jordan's Principle.

[88] This is not to cast blame on anyone however, it does show that with the best of intentions, deadlines may not be met. This is consistent with many instances in these proceedings and informs the Tribunal's approach in this ruling.

[89] Consequently, the Tribunal finds it more efficient to complete the long-term reform of the FNCFS Program in the short-term and deal with the long-term reform of Jordan's Principle afterward, rather than attempting both together and risking long delays for each.

[90] During the conference management call on July 25, 2025, Member Lustig mentioned that the FNCFS Program will always be undergoing change and that there is no perfect solution. Further, he mentioned that there needs to be some compromise from all sides to arrive to an agreement.

[91] The Tribunal further clarifies that compromise is one that is reasonable and respects the rights of First Nations children and in line with the spirit of the Tribunal's findings and orders.

[92] Furthermore, at the case management conference call on July 25, 2025, the Tribunal had intended to discuss how best to advance long-term reform based on the parties' submissions and further discussion at the CMCC. However, due to time constraints, this discussion was postponed, and the Tribunal informed the parties that another CMCC would be scheduled for this purpose.

[93] Following the CMCC, the Tribunal deliberated on the parties' responses to its Jordan's Principle consultation orders and other emerging issues. The Tribunal was also informed that the mediation process between the parties had been terminated by the Tribunal mediator. Canada expressed its willingness to continue discussions with the parties

to resolve two outstanding issues and indicated that it will provide an update in September 2025.

[94] The Tribunal's consent orders were issued in November 2024, with reasons to follow, aiming for an expeditious process for interim solutions and further orders.

[95] This delay is very concerning and informs the Tribunal on the proceedings moving forward.

[96] Five months from now, it will be the tenth anniversary of the Tribunal’s decision on the merits.

[97] The Tribunal believes it is now time to proceed towards completion on FNCFS long-term reform and further CMCCs can be scheduled following the Tribunal's orders below.

[98] While the Tribunal fully agrees to proceed with the OFA, it does not agree to delay the National FNCFS long-term reform until the OFA motion has been determined. This would be unhelpful for several reasons. The OFA will not apply to other regions, and the Tribunal will not rely on the OFA to determine a National FNCFS long-term reform remedy. Therefore, delaying the National FNCFS long-term reform proceedings until the OFA has been decided is neither reasonable nor in the best interests of First Nations children and families outside Ontario, and it is inconsistent with the Tribunal’s previous orders and with section 48.9(1) of the *CHRA*.

[99] The Tribunal directs that both the OFA and the National FNCFS long-term reform matters proceed concurrently. Should one be decided before the other, both matters will nonetheless have advanced and will proceed to hearings within a reasonably proximate timeframe.

[100] The Tribunal has received an unprecedented number of motions seeking interested party status. A recurring submission in these motions is that, if approved, the OFA may serve as a precedent for the National long-term reform. As noted above, the Tribunal has determined that this will not be the case, except insofar as certain general statements may be made regarding the Tribunal’s previous orders, findings, process and approach to remedies.

[101] Another recurring submission is that Canada has refused to return to negotiations, resulting in a halt in the National long-term reform. While the Tribunal does not determine the multiple motions for interested party status in this ruling, the order issued in this ruling may nonetheless address aspects of the recurring submissions that have generated concern among numerous First Nations governments and organizations that are not parties to these proceedings.

[102] The broad consultation for long-term reform orders explained in 2018 CHRT 4 were directed at Canada.

[103] Moreover, the Caring Society submits that now is the time to move swiftly and effectively to implement the dialogic approach now that the research, the experts and the First Nations in-Assembly have set the table for evidence-informed solutions for the FNCFS. First Nations and the NCCC is ready, the EAC is ready, the studies will be completed by March 31, 2025, the research is ready and so is the Caring Society and much of the work needed to meet these milestones has been completed.

[104] In considering Canada's submissions above and its willingness to sign a National long-term agreement that was ultimately rejected, Canada must be taken to have a clear understanding of what long-term reform entails from its perspective.

[105] The ideal solution would be for an agreement on consent of all the parties if Canada returns to the table and such an agreement is possible. However, if not, the Tribunal cannot allow the parties to dictate a very slow pace in achieving finality on long-term reform contrary to the *CHRA*'s requirements and the best interest of First Nations children and families and their respective Nations.

[106] The Tribunal in the objective of avoiding the possibility of an imposed final solution, urges Canada to return to the table of negotiations to listen to the NCCC and the co-complainants and consider the research, the experts and the evidence-informed solutions for long-term reform of the FNCFS Program.

[107] If Canada refuses, the Tribunal, the other parties, the NCCC, the experts, the First Nations Chiefs, governments and organizations, should not be forced to wait till the OFA is

completed to see what Canada decides to do for National long-term reform. Canada was ordered to complete long-term reform. Canada can agree to negotiate or not however, one thing that Canada cannot do is simply wait and let time go by. Therefore, should Canada refuse to return to the table to meet the NCCC and hear them out, the Tribunal will hear the co-complainants' evidence-based solutions representing the NCCC and multiple First Nations' viewpoints and Canada's and then choose between the long-term reform order requests.

[108] The Tribunal values all expert viewpoints of First Nations. However, the Tribunal is not and cannot invite them directly into these proceedings without creating a paralysis of these proceedings that would negatively affect the very children that are at the heart of these proceedings.

[109] The Tribunal has limited resources and is not mandated and does not have capacity to hear directly from every First Nation to make its orders. This is clearly expressed in considering the whole body of decisions rendered by this Tribunal in this case.

[110] The Tribunal finds that the Caring Society, the AFN and the NCCC, can aptly consult and gather relevant Nations specific, local and regional perspectives, other First Nations experts and First Nations organization's perspectives and incorporate them in their National long-term reform plan and requested orders for the Tribunal's consideration.

[111] Canada is encouraged to join them or to work on a separate plan informed by the recent evidence and recent studies and incorporate this in their National long-term reform plan and requested orders for the Tribunal's consideration.

[112] The Tribunal renders this creative and innovative decision, consistent with the *Grover* decision referred to above, in an effort to advance proceedings in the best interest of First Nations children and families in circumstances marked by limited collaboration among the parties, who have become increasingly adversarial, and in the face of unforeseen delays.

[113] The Tribunal, in issuing the following orders, establishes non-exhaustive parameters, which have been referenced in prior rulings. Long-term reform remedies shall:

1. Have lasting effects, be adequately resourced, and remain sustainable for present and future generations;

2. Be flexible and improve upon the Tribunal's previous orders;

3. Incorporate regional and local First Nations perspectives;

4. Be evidence-based, relying on the best currently available research and studies, without delay for additional studies;

5. Align with the spirit of the Tribunal's findings and rulings in a non-rigid manner;

6. Be First Nations–centered and respectful of their distinct needs and perspectives;

7. Be culturally appropriate, respect substantive equality, reflect the best interests of the child through an Indigenous lens and respect the specific needs of First Nations children and families;

8. Comply with domestic and international human rights, especially the Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Indigenous Peoples Act; and

9. Strive for excellence rather than perfection, without narrowing the Tribunal's findings and orders.

[114] The National FNCFS long-term reform plan and requested remedies outside Ontario shall include detailed deadlines and clear, measurable targets based on the most recent studies, evidence, and the diverse viewpoints of First Nations and other experts. The National long-term reform plan and requested remedies outside Ontario shall demonstrate how its implementation will clearly and effectively cease the systemic racial discrimination identified in the Tribunal's findings and prevent its recurrence for multiple generations. The National FNCFS long-term reform plan and requested remedies outside Ontario will focus on the long-term reform of the FNCFS currently before the Tribunal and described at length in its previous rulings. The National FNCFS long-term reform plan and requested remedies outside Ontario will improve upon the Tribunal's current orders, whether by mirroring them or by adopting different approaches, as supported by the evidence and First Nations' perspectives.

[115] The parties' commitment to this ruling and orders will inform the Tribunal on next steps and may impact the Tribunal's approach toward the other matters before it.

[116] The consultations shall be conducted efficiently and shall prioritize virtual meetings over in-person meetings in light of time and financial constraints.

[117] The Tribunal, in an effort to advance the matter, finds that, given the extended timeline for completing the remaining long-term orders originally intended to be finalized in 2023 as explained in 2022 CHRT 8 and the continued delays in these proceedings, there is a need for monthly reporting to the Tribunal. The parties engaged in the consultations shall provide the Tribunal with a monthly progress report.

IV. Orders

[118] Pursuant to section 48.9(1) and 53(2) of the CHRA, the dialogic approach, the Tribunal's previous orders and the Tribunal's retention of jurisdiction, the Tribunal orders:

[119] Canada shall inform the Tribunal, by August 29, 2025, whether it agrees to meet with the National Children's Chiefs Commission to discuss National FNCFS long-term reform outside Ontario, or whether it will reconsider meeting with the AFN and the Caring Society, on a voluntary basis, for the same purpose.

[120] Within four months of the date of this ruling (December 22, 2025), the Caring Society and the AFN shall consult, in accordance with the parameters set out above, with the National Children's Chiefs Commission, First Nations Chiefs, and other experts, including First Nations and First Nations organizations outside Ontario, as well as those that have filed interested party motions, to develop an evidence-based, comprehensive National FNCFS long-term reform plan and requested remedies outside Ontario. The completed plan, together with supporting affidavit evidence and materials, shall be filed with the Tribunal for its consideration.

[121] The consultations shall ensure that French speaking First Nations who desire to communicate and read materials in French will have the opportunity to do so.

[122] The determination of the OFA motion shall not be contingent upon the Tribunal's conclusion of its consideration of the National FNCFS long-term reform plan and requested remedies outside Ontario referred to in paragraph 120.

[123] The determination of the National FNCFS long-term reform plan and requested remedies outside Ontario shall not be contingent upon the Tribunal's conclusion of its consideration of the OFA motion for Ontario.

[124] The Caring Society, the AFN and Canada shall provide monthly updates to the Tribunal.

[125] Should Canada agree to participate in the consultations referred to in paragraph 120, it shall do so in accordance with the parameters set out above and the orders in this ruling. Where possible, a National FNCFS long-term reform plan and requested remedies outside Ontario, agreed to on consent by the Caring Society, the AFN, and Canada, together with supporting affidavit evidence and materials, shall be filed with the Tribunal at the conclusion of the consultations.

[126] If a National FNCFS long-term reform plan and requested remedies outside Ontario cannot be reached on consent, or if Canada declines to participate in the consultations, Canada shall, within four months of the date of this ruling (December 22, 2025), file with the Tribunal its evidence-based National plan on long-term reform remedies outside Ontario. The completed plan shall be supported by affidavit evidence and materials for the Tribunal's consideration.

[127] As already directed, the Ontario region and the OFA will have its separate hearing and parties in favour or opposing will have an opportunity to be heard. The Tribunal is aiming to hold a hearing in 2025, in the absence of unforeseen circumstances.

[128] The orders above do not include Jordan's Principle long-term reform.

V. Retention of jurisdiction

[129] Pending a complete and final agreement on long-term relief on consent or otherwise (a National long-term reform plan as ordered in this ruling) and consistent with the dialogic approach to remedies taken in this case and referred to above, the Panel retains jurisdiction on the Orders contained in this ruling and all its previous orders except its compensation orders. The Panel will revisit its retention of jurisdiction once the parties have filed a National

long-term reform plan as ordered in this ruling or a final and complete agreement on long-term reform or as the Panel sees fit considering the upcoming evolution of this case.

A. Case Management Conference Call (CMCC)

[130] The Tribunal will organize a CMCC shortly, to discuss the implementation of the Orders and answer any questions and/or clarifications, if necessary. The Tribunal will also discuss the long-term reform outside Ontario's hearing schedule. While the Tribunal will receive either a single National Plan filed on consent or two National FNFCS long-term reform plans with supporting evidence within approximately the same timeframe, the parties will have an opportunity to respond to the report(s). The schedule governing those submissions, any reply evidence, and the cross-examination of affiants and other witnesses if any, will be addressed before or at the CMCC.

Signed by

Sophie Marchildon
Panel Chairperson

Edward P. Lustig
Tribunal Member

Ottawa, Ontario
August 20, 2025

Canadian Human Rights Tribunal

Parties of Record

Tribunal File: T1340/7008

Style of Cause: First Nations Child & Family Caring Society of Canada et al. v. Attorney General of Canada (representing the Minister of Indigenous and Northern Affairs Canada)

Ruling of the Tribunal Dated: August 20, 2025

Written representations by:

David P. Taylor, Sarah Clarke, Kiana Saint-Macary and Robin McLeod, counsel for the First Nations Child and Family Caring Society of Canada, the Complainant

Anshumala Juyal and Khizer Pervez, counsel for the Canadian Human Rights Commission

Paul Vickery, Sarah-Dawn Norris, Meg Jones, Dayna Anderson, Kevin Staska, Sarah Bird, Jon Khan, Alicia Dueck-Read and Aman Owais, counsel for the Attorney General of Canada, the Respondent

Maggie Wente, Jessie Stirling, Ashley Ash and Katelyn Johnstone, counsel for the Chiefs of Ontario, Interested Party

Julian Falconer, Asha James, Shelby Percival and Meaghan Daniel, counsel for the Nishnawbe Aski Nation, Interested Party